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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 SOPHAL BUY, DANIEL DIXON,  
16 and MICHELE SIMPSON

17 Plaintiffs,

18 v.

19 HMSHOST CORPORATION and  
20 HOST INTERNATIONAL, INC.,

21 Defendants.

Civil Action No.

**COMPLAINT AND JURY DEMAND**

**INTRODUCTION**

22 Plaintiffs SOPHAL BUY, DANIEL DIXON, and MICHELE SIMPSON  
23 (together “Plaintiffs”) were employed by Defendants HMSHOST CORPORATION  
24 and HOST INTERNATIONAL, INC. (collectively, “Defendants” or “HMSHost”) as “assistant unit managers” (“AMs”) at various food and beverage concessions  
25 within Nevada. Defendants misclassified Plaintiffs as exempt under federal law and  
26 failed to pay them for all hours worked. Defendants also failed to pay Plaintiffs  
27 overtime for hours above 40 that they worked in a workweek.  
28

1 Plaintiffs assert that they are entitled to: (1) unpaid wages from Defendants  
 2 for all hours worked by them as well as for overtime work for which they did not  
 3 receive overtime premium pay, as required by the Fair Labor Standards Act  
 4 (“FLSA”), 29 U.S.C. §§ 201 *et seq.*; (ii) liquidated and punitive damages pursuant  
 5 to the FLSA; and (iii) declaratory relief under the FLSA.  
 6

### 7 **JURISDICTION AND VENUE**

- 9 1. Jurisdiction over Plaintiffs’ FLSA claims is based upon 28 U.S.C. § 1331.
- 10 2. Plaintiffs’ claims involve matters of national or interstate interest.
- 11 3. Defendants are subject to personal jurisdiction in the District of Nevada.
- 12 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as a  
 13 substantial part of the events or omissions giving rise to the claims occurred in this  
 14 District.  
 15
- 16 5. This Court is empowered to issue a declaratory judgment pursuant to 28  
 17 U.S.C. §§ 2201 and 2202.  
 18

### 19 **THE PARTIES**<sup>1</sup>

20 6. Plaintiff Sophal Buy was, at all relevant times, an adult individual,  
 21 residing in Charlotte, North Carolina or Las Vegas, Nevada.  
 22

23 7. Plaintiff Buy was employed by Defendants from in or about July 2010 to  
 24 August 2011 as an AM at the Burger King and California Pizza Kitchen units at the  
 25  
 26

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27 <sup>1</sup> Plaintiffs’ claims in this action were tolled by virtue of their participation in the  
 28 presently decertified collective action in *Easton Stevens, et al. v. HMSHost Corporation, et al.*, Case No. 10-cv-3571 (E.D.N.Y.).

1 Charlotte Douglas International Airport. Plaintiff Buy was employed by the  
2 Defendants from in or about August 2011 to December 2012 as an AM at the Burger  
3 King, Pizza Hut, Starbucks units in Las Vegas Airport.  
4

5 8. Plaintiff Buy worked in excess of forty (40) hours per workweek, without  
6 receiving wages from Defendants for all hours worked by him as well as overtime  
7 compensation as required by federal law. By way of example, Plaintiff Buy worked  
8 over 40 hours during Thanksgiving week of 2012.  
9

10 9. Plaintiff Daniel Dixon was, at all relevant times, an adult individual,  
11 residing in Las Vegas.  
12

13 10. Plaintiff Dixon was employed by Defendants from in or about  
14 2010 to July 2011 as an AM at the Burger King, Carvel, Sbarro, and Great American  
15 Bagel units in the Las Vegas Airport.  
16

17 11. Plaintiff Dixon worked in excess of forty (40) hours per workweek,  
18 without receiving wages from Defendants for all hours worked by him as well as  
19 overtime compensation as required by federal law. By way of example, Plaintiff  
20 Dixon worked over 40 hours during the first week in June 2011.  
21

22 12. Plaintiff Michele Simpson was, at all relevant times, an adult individual,  
23 residing in Las Vegas, Nevada.  
24

25 13. Plaintiff Simpson was employed by Defendants from in or about January  
26 2008 to January 2011 as an AM at the Starbucks, Wolfgang Puck, Burger King, and  
27 Carvel units in Las Vegas Airport.  
28

1           14. Plaintiff Simpson worked in excess of forty (40) hours per workweek,  
2 without receiving wages from Defendants for all hours worked by him as well as  
3 overtime compensation as required by federal law. By way of example, Plaintiff  
4 Simpson worked over 40 hours during Christmas week in 2010.  
5

6           15. Upon information and belief, Defendant HMSHost Corporation, is a  
7 corporation organized under the laws of the State of Delaware, with its principal place  
8 of business at 6600 Rockledge Drive, Bethesda, Maryland 20817. HMSHost  
9 Corporation is wholly owned by Autogrill Group, Inc., a subsidiary of Autogrill  
10 S.p.A., an Italian corporation. Directly or through wholly owned subsidiaries,  
11 including Defendant Host International, Inc., HMSHost Corporation manages and  
12 oversees the operations of food and beverage concessions at numerous United States  
13 airports and other travel facilities, and acts with its subsidiaries, including Defendant  
14 Host International, Inc., in concert and together in a common enterprise and through  
15 related activities, as here relevant, so that the actions of those subsidiaries and  
16 HMSHost Corporation may be imputed to each of the others and to one another so that  
17 they operate as joint employees within the meaning of the Fair Labor Standards Act.  
18  
19  
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21

22           16. Upon information and belief, Defendant Host International, Inc., is a  
23 Delaware corporation with its principal place of business at 6905 Rockledge Drive,  
24 Bethesda, Maryland 20817.  
25

26           17. Defendants were and are doing business in Nevada.  
27  
28

**STATEMENT OF FACTS**

18. Defendants HMSHost Corporation and Host International, Inc., directly and through their subsidiaries, are one of the world's largest providers of travel venue merchandise and food and beverage concessions. Defendants have operations in a number of the largest airports in North America and its 20,000+ employees serve over 1 billion travelers every year.

19. At all relevant times, Plaintiff Buy was employed as an assistant unit manager for Defendants at various units.

20. At all relevant times, Plaintiff Dixon was employed as an assistant unit manager for Defendants at various units.

21. At all relevant times, Plaintiff Simpson was employed as an assistant unit manager for Defendants at various units.

22. Plaintiffs' activities while at work included but were not limited to, bussing tables, cleaning the restaurants, checking to make sure that supplies were properly shelved and/or checking inventory, cooking, and helping customers.

23. Plaintiffs had minimal, if any, involvement in hiring.

24. Plaintiffs had minimal, if any, involvement in firing.

25. Plaintiffs' work was performed for the benefit of the Defendants, in the normal course of the Defendants' business and was integrated into the business of the Defendants.

1        26. The primary duties and work performed by Plaintiffs required little skill  
2 and no capital investment. Their duties did not substantially include managerial  
3 responsibilities or the exercise of independent judgment. Rather, they devoted the  
4 majority of their time to many insignificant duties and duties identical to wait staff,  
5 bus staff and other non-exempt positions.

7        27. Plaintiffs often worked in excess of 40 hours a week, yet the Defendants  
8 willfully failed to pay them for all hours worked, as well as overtime compensation of  
9 one and one-half times their regular rate of pay in violation of the FLSA. Upon  
10 information and belief, it is Defendants' uniform policy and procedure not to pay all  
11 similarly situated employees for all hours worked by them, as well as overtime  
12 compensation.

15        28. Throughout all relevant time periods, while Defendants employed  
16 Plaintiffs, Defendants failed to maintain accurate and sufficient time records.

18        29. Pursuant to a centralized, company-wide policy, pattern and/or practice,  
19 Defendants have classified all AMs as exempt from coverage of the overtime  
20 provisions of the FLSA.

22        30. Defendants did not perform a person-by-person analysis of Plaintiffs job  
23 duties when making the decision to classify them as exempt from the FLSA's overtime  
24 protections.

26        31. Defendants established labor budgets to cover labor costs for the stores in  
27 which Plaintiffs. The wages of Defendants' store-level employees were deducted from  
28

1 the labor budgets. Defendants, however, did not provide sufficient money in the labor  
2 budgets to cover all hours needed to complete the necessary non-exempt tasks in each  
3 store. Defendants knew or recklessly disregarded the fact that their underfunding of  
4 store labor budgets resulted in Plaintiffs working more than 40 hours in a workweek  
5 without receiving any additional overtime compensation. This allowed Defendants to  
6 avoid paying additional wages (including overtime) to the non-exempt, store-level  
7 employees.  
8

9  
10 32. Defendants' unlawful conduct as described above, was willful and/or in  
11 reckless disregard of the applicable wage and hour laws pursuant to Defendants'  
12 centralized, company-wide policy, pattern, and/or practice of attempting to minimize  
13 labor costs by violating the FLSA. Defendants knew that Plaintiffs were not  
14 performing activities that complied with any FLSA exemption and, inasmuch as  
15 Defendants are substantial corporate entities aware of their obligations under the  
16 FLSA, they, accordingly, acted willfully or recklessly in failing to classify Plaintiffs as  
17 non-exempt employees.  
18  
19

20  
21 33. Defendants are aware or should have been aware, through Store Managers  
22 and General Managers (as its authorized agents), that Plaintiffs were primarily  
23 performing non-exempt duties. As a business operating enough units to serve over 1  
24 billion customers per year, Defendant knew or recklessly disregarded the fact that the  
25 FLSA required it to pay employees primarily performing non-exempt duties an  
26 overtime premium for hours worked in excess of 40 per workweek.  
27  
28

1       34. As part of their regular business practice, Defendants have intentionally,  
2 willfully and repeatedly engaged in a pattern, practice and/or policy of violating the  
3 FLSA with respect to Plaintiffs. This policy and pattern or practice includes but it is  
4 not limited to  
5

6           a. willfully misclassifying Plaintiffs as exempt from the requirements of the  
7 FLSA;  
8

9           b. willfully failing to pay Plaintiffs overtime wages for hours that they  
10 worked in excess of 40 hours per week; and  
11

12           c. willfully failing to provide enough money in its store-level labor budgets  
13 for its non-exempt employees to perform their duties and responsibilities,  
14 forcing Plaintiffs to perform such non-exempt tasks.  
15

16       35. Defendants' willful violations of the FLSA are further demonstrated by  
17 the fact that during the relevant time period and continuing to the present, Defendants  
18 failed to maintain accurate and sufficient time records for Plaintiffs. Defendants acted  
19 recklessly or in willful disregard of the FLSA by instituting a policy and/or practice  
20 that did not allow Plaintiffs to record all hours worked, but only allowed them to report  
21 a maximum of 40 hours worked per week.  
22

23       36. Upon information and belief, Defendants' unlawful conduct described in  
24 this Complaint is pursuant to a corporate policy or practice of minimizing labor costs  
25 by violating the FLSA.  
26  
27  
28



1           37. Due to the foregoing, Defendants' failure to pay overtime wages for work  
2 performed by Plaintiffs in excess of 40 hours per week was willful and has been  
3 widespread, repeated and consistent.  
4

5                           **FIRST CLAIM FOR RELIEF:**  
6                           **FAIR LABOR STANDARDS ACT**  
7                           **(ON BEHALF OF ALL PLAINTIFFS)**

8           38. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37  
9 as if they were set forth again herein.  
10

11           39. At all relevant times, Defendants have been and continue to be, an  
12 employer engaged in interstate commerce and/or the production of goods for  
13 commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).  
14

15           40. At all relevant times, Defendants employed, and/or continue to employ,  
16 Plaintiffs within the meaning of the FLSA.

17           41. Upon information and belief, at all relevant times, Defendants have had  
18 gross revenues in excess of \$500,000.  
19

20           42. At all relevant times, Defendants had a policy and practice of refusing to  
21 pay for all hours worked, as well as pay overtime compensation to their assistant unit  
22 managers for hours worked in excess of forty hours per workweek.  
23

24           43. As a result of Defendants' willful failure to record, report, credit and/or  
25 compensate its employees, including Plaintiffs, Defendants have failed to make, keep  
26 and preserve records with respect to each of its employees sufficient to determine the  
27  
28

1 wages, hours and other conditions and practices of employment in violation of the  
2 FLSA, 29 U.S.C. §§ 201, et seq., including 29 U.S.C. §§ 211(c) and 215(a).

3  
4 44. As a result of Defendants' policy and practice of minimizing labor costs  
5 by underfunding the labor budgets for its stores, Defendants knew or recklessly  
6 disregarded the fact that Plaintiffs were primarily performing manual labor and non-  
7 exempt tasks.

8  
9 45. Due to Defendants' failure to provide enough labor budget funds, failure  
10 to take into account the impact of the underfunded labor budgets on the job duties of  
11 Plaintiffs, Defendants' actual knowledge, through its Store Managers and General  
12 Managers, that the primary duties of Plaintiffs was manual labor and other non-exempt  
13 tasks, Defendants' failure to an analysis of Plaintiffs' job duties to ensure that they  
14 were performing exempt job duties, and Defendants' instituting a policy and practice  
15 that did not allow Plaintiffs to record all hours worked, Defendant knew and/or  
16 showed reckless disregard that its conduct was prohibited by the FLSA. 29 U.S.C. §  
17 255(a).

18  
19  
20  
21 46. As a result of Defendants' FLSA violations, Plaintiffs are entitled (a) to  
22 recover from Defendant their unpaid wages for all of the hours worked by them, as  
23 overtime compensation, (b) to recover an additional, equal amount as liquidated  
24 damages for Defendants' willful violations of the FLSA, (c) to recover their  
25 unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and  
26 disbursements of this action, pursuant to 29 U.S.C. § 216(b).  
27  
28

1           47. Because Defendants' violations of the FLSA have been willful, a three-  
2 year statute of limitations applies, pursuant to 29 U.S.C. § 255.

3  
4                           **PRAYER FOR RELIEF**

5           Wherefore, Plaintiffs respectfully request that this Court grant the following  
6 relief:

- 7           a. A declaratory judgment that the practices complained of herein are  
8 unlawful under the FLSA;  
9  
10          b. An award of unpaid wages for all hours worked as well as overtime  
11 compensation due under the FLSA;  
12  
13          c. An award of liquidated and/or punitive damages as a result of the  
14 Defendants' willful failure to pay for all hours worked as well as overtime  
15 compensation pursuant to 29 U.S.C. § 216;  
16  
17          d. An award of damages representing the employer's share of FICA, FUTA,  
18 state unemployment insurance, and any other required employment taxes;  
19  
20          e. An award of prejudgment and post-judgment interest;  
21  
22          f. An award of costs and expenses of this action together with reasonable  
23 attorneys' and expert fees; and  
24  
25          g. Such other and further relief as this Court deems just and proper.  
26  
27  
28

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the Complaint.

Dated: Las Vegas, Nevada  
April 6, 2015

By s/Leon Greenberg  
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\* to seek admission *pro hac vice*

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